

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
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)	
Video Description: Implementation of the)	
Twenty-First Century Communications and)	MB Docket No. 11-43
Video Accessibility Act of 2010)	
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**REQUEST OF ESPN, INC. FOR FURTHER EXEMPTION FROM LIST OF TOP FIVE
NON-BROADCAST NETWORKS**

The Walt Disney Company and ESPN, Inc. (“ESPN”)¹ hereby submit the instant request (“Request”) to extend ESPN’s existing exclusion from the list of top five national non-broadcast networks subject to the video description rules of the Federal Communications Commission (“FCC” or “Commission”).² As explained herein, ESPN does not provide at least 50 hours per quarter of prime-time non-exempt programming. Therefore, the Commission should affirm its prior conclusion that the FCC’s video description regulations do not apply to ESPN.

Pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”) and the FCC’s implementing rules, multichannel video programming distributors with 50,000 or more subscribers are required to provide, on a quarterly basis, 50 hours of video-described prime time and/or children’s programming on each of the top five non-

¹ ESPN is 80% owned by The Walt Disney Company.

² See 47 C.F.R. § 79.3; *see also* Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, MB Docket No. 11-43, Report and Order, 26 FCC Rcd 11847, (2011) (“Video Description Order”).

broadcast networks they carry.³ These regulations, however, do not apply to live or near-live programming, *i.e.*, programming that is “performed either simultaneously with, or recorded no more than 24 hours prior to, its first transmission by a video programming distributor.”⁴ Thus, in adopting the video description rules presently in effect, the Commission expressly excluded ESPN from the top five non-broadcast networks because ESPN did not provide at least 50 hours per quarter of primetime programming that is not live or near live.⁵

The Commission further stated that it would update the list of top five non-broadcast networks on a periodic basis to account for changes in ratings of programming networks.⁶ The second update of the list of top five non-broadcast networks is scheduled to occur on July 1, 2018, based upon the 2016-2017 ratings year.⁷ The FCC stated that programming networks that do not air at least 50 hours of non-exempt primetime programming may seek an exemption from the video description requirements.⁸ Accordingly, ESPN is filing the instant Request for further exclusion from the list of top five non-broadcast networks.⁹

As was the case when the FCC adopted the Video Description Order, ESPN does not consistently provide at least 50 hours per quarter of non-exempt (*i.e.*, non-live or non-near live)

³ See Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010); 47 C.F.R. § 79.3(b)(4).

⁴ See 47 C.F.R. § 79.3(a)(7). See also CVAA at Title II, sec. 202(a)(3) (stating that the video description regulations “shall not apply to live or near-live programming”).

⁵ Video Description Order, at ¶ 14.

⁶ See Video Description Order, at ¶ 18. See also, In the Matter of Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010, Biennial Report to Congress, 29 FCC Rcd 11909, n. 412 (2014) (“Report to Congress”).

⁷ See Video Description Order, at ¶ 18; Report to Congress at n. 412.

⁸ See Video Description Order, at ¶ 18; Report to Congress at n. 412.

⁹ See Media Bureau Announces National Nonbroadcast Network Rankings for Purposes of the July 1, 2015 Update to Video Description Requirements, Public Notice, MB Docket No. 11-43; DA 18-42 (rel. January. 12, 2018) (stating that requests to be excluded from the list of top five networks covered by the video description requirements must be filed no later than 30 days after publication of the Public Notice, *i.e.*, by due March 9, 2018.)

prime-time programming. ESPN's programming is well-known to contain a mixture of live sporting events, live studio sports reporting shows, and replays of very-recently taped studio sports programs. This programming includes, among other things the NFL, the NBA, MLB, College Football and College Basketball. ESPN's award-winning studio programming includes SportsCenter, Around the Horn, Outside the Lines, Baseball Tonight, PTI, ESPN Films and SC Featured. Given this mixture of live and studio nearly-live programming (much of which has a significant audio component), ESPN is exactly the type of network that the CVAA intended to exempt.

In preparation for submission of this Request, ESPN reviewed its programming line-up for the past thirteen quarters, from October 1, 2014 through December 31, 2017.¹⁰ As part of this process, ESPN categorized its prime-time content (as defined by the FCC) as to whether it was “live or near-live,” as defined in the FCC’s rules.¹¹ Based on this careful review, and as further detailed in the attached Declaration,¹² ESPN found that for *every one* of the past six quarters, ESPN did *not* air more than 50 hours of non-exempt (*i.e.*, live or near-live) programming during prime-time hours. In addition, attached to this Request are a few illustrative programming schedules from December 2017 that provide additional details with respect to ESPN’s programming schedule.¹³ In short, ESPN continues to “primarily air programming recorded less than 24 hours before it is first aired.”¹⁴ Accordingly, ESPN submits

¹⁰ To qualify for its current exclusion from the top five national non-broadcast networks, in 2015, ESPN submitted information regarding its programming line-up for the six quarters, from April 1, 2013 through September 30, 2014. Thus, the instant Request includes programming information from June 26, 2016 through December 31, 2017, the end of the most recent calendar quarter.

¹¹ 47 C.F.R. § 79.3(a)(7).

¹² See Attachment A.

¹³ See Attachment B.

¹⁴ Video Description Order, at ¶ 2.

that it clearly continues to qualify for a further exemption from the video description requirements set forth in Section 79.3 of the FCC's rules.

Respectfully submitted,

/s/ Susan L. Fox

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March 5, 2018

Declaration of Kenneth Gordon, Jr.

I, Kenneth Gordon, Jr., serve as Assistant Chief Counsel for ESPN. In this capacity, I have recently overseen the review of ESPN's programming schedule for the past thirteen quarters (from October 1, 2014 through December 31, 2017) to confirm that ESPN continues to qualify for a continuing exclusion from the top five non-broadcast networks under the FCC's video description rules.

I asked ESPN employees with access to the schedule for ESPN over the past six quarters to review ESPN's prime-time schedules during that time-frame and to categorize the programming into categories that reflect the FCC's definition of live and near-live programming, as set forth in Section 79.3(a)(7) of the FCC's rules. This review of ESPN's schedule over this time frame indicates that, for every one of the past six quarters, ESPN did not air more than 50 hours of live or near-live programming during prime-time (again, using the definitions of near-live, as set forth in Commission rules). The specific findings for the last six quarters are listed below.

In addition, I asked ESPN employees to review the schedule of each calendar quarter since third quarter of 2014 (i.e., period end date of the last quarter reported to the Commission by ESPN in connection with prior exemption request) and ESPN's analysis found that the average number of hours of non-exempt programming that we aired during prime-time was thirty-four (34) hours per calendar quarter (with all quarters well below the 50 hours per quarter threshold, except for the fourth quarter of 2014 (fifty-two (52) hours) and second quarter of 2016 (fifty-one (51) hours)).

<i>Calendar Quarter</i>	<i>Avg. Hours: Prime-Time Non-Exempt Programming</i>
June 27, 2016 – September 25, 2016	29 hours
September 26, 2016 – December 25, 2016	35 hours
December 26, 2016 – March 26, 2017	28 hours
March 27, 2017 – June 25, 2017	42 hours
June 26, 2017 – September 24, 2017	21 hours
September 25, 2017 – December 31, 2017	26 hours

I hereby declare, under penalty of perjury, that, to the best of my knowledge,
information and belief, all of the factual information contained herein is accurate and complete.



Kenneth Gordon, Jr.
Assistant Chief Counsel
ESPN, Inc.

Wednesday, October 17, 2017

ESPN

ESPN2

12a	Cont...11:46PM: SRVP 2566 - SportsCenter with Scott Van Pelt (live)	12:00AM: BBPT 12792 - Baseball Tonight > Baseball Tonight presented by Chevrolet
1a	01:00AM: FBPT 1603 - NFL PrimeTime > NFL PrimeTime presented by Microsoft Surface (rep)	12:30AM: SRXA 2359 - SportsCenter Special > Marty Smith's America (rep)
2a	02:00AM: SRVP 2566 - SportsCenter with Scott Van Pelt (rep)	01:00AM: SRVP 2566 - SportsCenter with Scott Van Pelt (tape)
3a	03:00AM: FBPT 1603 - NFL PrimeTime > NFL PrimeTime presented by Microsoft Surface (rep)	02:00AM: ERJJ 697 - Jalen & Jacoby (tape)
4a	04:00AM: SRVP 2566 - SportsCenter with Scott Van Pelt (rep)	02:30AM: FBPA 3136 - ESPN's Afternoon College Football > ESPN College Football presented by Playstation Vue; Oklahoma vs Texas (tape)
5a	05:00AM: SRVP 2566 - SportsCenter with Scott Van Pelt (rep)	04:30AM: ERJJ 697 - Jalen & Jacoby (rep)
6a	06:00AM: SRVP 2566 - SportsCenter with Scott Van Pelt (rep)	05:00AM: ERMB 2569 - Best of Mike And Mike > Mike & Mike: loym (tape)
7a	07:00AM: SRAM 18453 - SportsCenter (live)	06:00AM: ERMM 8594 - Mike And Mike > Mike & Mike presented by Progressive (live)
8a	08:00AM: SRAM 18699 - SportsCenter (live)	
9a	09:00AM: SRAM 17300 - SportsCenter (live)	
10a	10:00AM: TAMS 4224 - First Take (live)	10:00AM: SRAM 17301 - SportsCenter (live)
11a		11:00AM: SRAM 17302 - SportsCenter (live)
12p	12:00PM: SRAM 17303 - SportsCenter (live)	12:00PM: TAMS 4224 - First Take (tape)
1p	01:00PM: SRON 4210 - Outside The Lines (live)	
2p	01:30PM: FBPN 7530 - NFL Live > NFL Live presented by KFC (live)	02:00PM: ERPF 2859 - The Paul Finebaum Show (live)
3p	03:00PM: BKRN 623 - NBA: The Jump > NBA: The Jump presented by Marathon Petroleum (live)	03:00PM: FBPN 7530 - NFL Live > NFL Live presented by KFC (tape)
4p	04:00PM: TASN 2683 - SportsNation > SportsNation presented by Toyota (live)	04:00PM: BBIT 176 - MLB Intentional Talk (live)
5p	04:30PM: TALB 1488 - Highly Questionable A	
6p	05:00PM: TAAH 5066 - Around The Horn (same day)	05:00PM: FBFF 45 - The Fantasy Show > The Fantasy Show presented by E*Trade (same day)
7p	05:30PM: EOPT 5805 - Pardon The Interruption A	05:30PM: FBGL 3774 - College Football Live (same day)
8p	06:00PM: SRMJ 247 - SportsCenter with Michael And Jemele (live)	06:00PM: TAAH 5066 - Around The Horn (tape)
9p	07:00PM: FBPR 31 - CFP Rankings Show > College Football Playoff: Top 25 presented by Chick-Fil-A (same day)	06:30PM: EOPT 5805 - Pardon The Interruption (tape)
10p	08:00PM: EOES 978 - E:60 > E:60-Ten Years (tape)	07:00PM: SRSE 7983 - SportsCenter (live)
11p		08:00PM: SRSE 7984 - SportsCenter (live)
		09:30PM: GMPO 2100 - Poker > 2017 World Series of Poker Main Event (rep)
	10:00PM: SRSE 7986 - SportsCenter (live)	10:30PM: GMPO 2101 - Poker > 2017 World Series of Poker Main Event (tape)
	11:00PM: SRLB 12769 - SportsCenter (live)	11:30PM: GMPO 2102 - Poker > 2017 World Series of Poker Main Event (tape)

Cont.

Wednesday, November 8, 2017

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12a	12:00AM: SRVP 106 - SportsCenter with Scott Van Pelt (live)	Cont...11:30PM: EODC 1294 - ESPN Original Documentaries > 30 For 30: Catholics vs. Convicts (rep)
1a	01:00AM: SRWC 5987 - SportsCenter (live)	01:30AM: ERJJ 713 - Jalen & Jacoby (same day)
2a	02:00AM: SRMB 12283 - SportsCenter (live)	02:00AM: SRXA 2362 - SportsCenter Special > Marty Smith's America (rep)
3a	03:00AM: SRMB 12283 - SportsCenter (rep)	02:30AM: EODC 1376 - ESPN Original Documentaries > 30 For 30: Nature Boy presented by Mini (tape)
4a	04:00AM: SRMB 12283 - SportsCenter (rep)	04:00AM: ERJJ 713 - Jalen & Jacoby (rep)
5a	05:00AM: SRMB 12283 - SportsCenter (rep)	04:30AM: FBFF 60 - The Fantasy Show > The Fantasy Show presented by E*Trade (rep)
6a	06:00AM: SRMB 12283 - SportsCenter (rep)	05:00AM: SRMB 12283 - SportsCenter (tape)
7a	07:00AM: SRAM 18409 - SportsCenter (live)	06:00AM: ERM 8610 - Mike And Mike > Mike & Mike presented by Progressive (live)
8a	08:00AM: SRAM 18715 - SportsCenter (live)	
9a	09:00AM: SRAM 17380 - SportsCenter (live)	
10a	10:00AM: TAMS 4240 - First Take (live)	10:00AM: SRAM 17381 - SportsCenter (live)
11a		11:00AM: SRAM 17382 - SportsCenter (live)
12p	12:00PM: SRAM 17383 - SportsCenter (live)	12:00PM: TAMS 4240 - First Take (tape)
1p	01:00PM: SRON 4223 - Outside The Lines (live)	
2p	01:30PM: FBPN 7546 - NFL Live > NFL Live presented by Dr. Scholl; S (live)	02:00PM: ERPF 2875 - The Paul Finebaum Show (live)
3p	03:00PM: BKRN 639 - NBA: The Jump (live)	03:00PM: FBPN 7546 - NFL Live > NFL Live presented by Dr. Scholl; S (tape)
4p	03:30PM: TASN 2699 - SportsNation > SportsNation presented by Tovola (live)	
5p	04:30PM: TALB 1504 - Highly Questionable A	04:30PM: BBIT 206 - MLB Intentional Talk (live)
6p	05:00PM: TAAH 5079 - Around The Horn (same day)	05:00PM: FBFF 61 - The Fantasy Show > The Fantasy Show presented by E*Trade (same day)
7p	05:30PM: EOPT 5821 - Pardon The Interruption > Pardon The Interruption presented by Skyy A	05:30PM: FBGL 3790 - College Football Live (same day)
8p	06:00PM: SRMJ 260 - SportsCenter with Michael And Jemele (live)	06:00PM: TAAH 5079 - Around The Horn (tape)
9p		06:30PM: EOPT 5821 - Pardon The Interruption (tape)
10p	07:00PM: BKNR 1816 - NBA Countdown > NBA Countdown presented by Mountain Dew (live)	07:00PM: FBPA 2788 - ESPN's Primetime College Football > ESPN College Football Primetime: Toledo vs Ohio (live)
11p	08:01PM: BKNW 880 - NBA Wednesday > NBA Wednesday presented by State Farm: Los Angeles Lakers vs Boston Celtics (live)	
		10:28PM: SRSE 8050 - SportsCenter (live)
	10:31PM: BKNW 881 - NBA Wednesday > NBA Wednesday presented by State Farm: Minnesota Timberwolves vs Golden State Warriors (live)	11:00PM: SRLB 12531 - SportsCenter (live)

Cont.

Tuesday, December 19, 2017

ESPN

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12a	Cont...11:20PM: SRVP 2575 - SportsCenter with Scott Van Pelt (live)	12:00AM: GMPO 2101 - Poker > 2017 World Series of Poker Main Event (rep)
1a	01:00AM: FBPT 1612 - NFL PrimeTime @ Studio, Bristol, CT USA (rep)	01:00AM: SRVP 2575 - SportsCenter with Scott Van Pelt (tape)
2a	02:00AM: SRVP 2575 - SportsCenter with Scott Van Pelt (rep)	02:00AM: ERJJ 742 - Jalen & Jacoby @ Studio, Bristol, CT USA (same day) 02:30AM: FBFF 89 - The Fantasy Show (rep)
3a	03:00AM: FBPT 1612 - NFL PrimeTime @ Studio, Bristol, CT USA (rep)	03:00AM: SRVP 2575 - SportsCenter with Scott Van Pelt (rep)
4a	04:00AM: FBCB 1452 - College Football Bowl Game > Raycom Media Camellia Bowl @ Cramton Bowl, Montgomery, AL USA: Middle Tennessee vs Arkansas State (rep)	04:00AM: SRVP 2575 - SportsCenter with Scott Van Pelt (rep)
5a		05:00AM: SRVP 2575 - SportsCenter with Scott Van Pelt (rep)
6a	06:00AM: SRVP 2575 - SportsCenter with Scott Van Pelt (rep)	06:00AM: ERGW 17 - Golic And Winoo > Golic And Winoo presented by Progressive @ Studio, Bristol, CT USA (live)
7a	07:00AM: SRAM 18498 - SportsCenter @ Studio, Bristol, CT USA (live)	
8a	08:00AM: SRAM 18744 - SportsCenter @ Studio, Bristol, CT USA (live)	
9a	09:00AM: SRAM 17520 - SportsCenter @ Studio, Bristol, CT USA (live)	
10a	10:00AM: TAMS 4267 - First Take @ Studio, Bristol, CT USA (live)	10:00AM: SRAM 17521 - SportsCenter @ Studio, Bristol, CT USA (live)
11a		11:00AM: SRAM 17522 - SportsCenter @ Studio, Bristol, CT USA (live)
12p	12:00PM: SRAM 17523 - SportsCenter @ Studio, Bristol, CT USA (live)	12:00PM: TAMS 4267 - First Take @ Studio, Bristol, CT USA (tape)
1p	01:00PM: SRON 4243 - Outside The Lines @ Studio, Bristol, CT USA (live) 01:30PM: FBPN 7571 - NFL Live @ Studio, Bristol, CT USA (live)	
2p		02:00PM: ERPF 2904 - The Paul Finebaum Show (live)
3p	03:00PM: BKRN 668 - NBA: The Jump @ Studio, Los Angeles, CA USA (live) 03:30PM: TASN 2719 - SportsNation > SportsNation presented by Toyota @ Studio, Los Angeles, CA USA (live)	03:00PM: FBPN 7571 - NFL Live @ Studio, Bristol, CT USA (tape)
4p	04:30PM: TALB 1529 - Highly Questionable @ Miami, FL USA 05:00PM: TAAH 5096 - Around The Horn @ Washington, DC USA (same day) 05:30PM: EOPT 5847 - Pardon The Interruption > Pardon The Interruption presented by 06:00PM: SRMJ 280 - SportsCenter with Michael And Jemele @ Studio, Bristol, CT USA (live)	04:30PM: BBIT 246 - MLB Intentional Talk @ MLB Studios, Secaucus, NJ USA (live) 05:00PM: FBFF 90 - The Fantasy Show (same day) 05:30PM: FBGL 3965 - College Football Live > College Football Live presented by Great 06:00PM: TAAH 5096 - Around The Horn @ Washington, DC USA (tape) 06:30PM: EOPT 5847 - Pardon The Interruption @ Washington, DC USA (tape)
7p	07:00PM: FBCB 1454 - College Football Bowl Game > Cheribundi Tart Cherrv Boca Raton Bowl @ Fau Stadium, Boca Raton, FL USA: Akron vs Florida Atlantic (live)	07:00PM: BKAC 4764 - Atlantic Coast Conference Basketball > Atlantic Coast Conference Basketball as Part of Holiday Hoops presented by Zales @ Littlejohn Coliseum, Clemson, SC USA: South Carolina vs Clemson (live)
8p		
9p		09:00PM: BKSE 3069 - Southeastern Conference Basketball > Southeastern Conference Basketball as Part of Holiday Hoops presented by Zales @ Steedman Coliseum, Athens, GA USA: Georgia Tech vs Georgia (live)
10p	10:30PM: SRLB 12800 - SportsCenter @ Studio, Bristol, CT USA (live)	
11p		11:00PM: FBXX 7888 - Football > Road To The College Football Playoff presented by 11:30PM: FBXX 7889 - Football > Road To The College Football Playoff presented by